



February 6, 2002

Ms. Shelly Doty
City Secretary/Records Manager
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR2002-0563

Dear Ms. Doty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158849.

The City of Cleburne (the "city") received two requests for a specified police report. As these two requests seek the same information, we have combined them into one ruling with the identification number listed above. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office the request letter you state the city received on December 4, 2001.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must

make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.108 is a discretionary exception and does not provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Act can be waived). Therefore, the information responsive to the request received by the city on December 4, 2001 must be released to that requestor.

In addition, we note that section 552.007 of the Government Code prohibits a governmental body from selectively disclosing information that is not confidential by law but that a governmental body may withhold under a discretionary exception to public disclosure. Thus, as the information responsive to both requests is the same in this case, and as the city is required to release the information responsive to the December 4, 2001 request under section 552.302, we conclude that the city must also release the information at issue to the requestor whose request was received by the city on November 29, 2001.

We note, however, that the submitted report contains information excepted from disclosure under section 552.130 of the Government Code. Section 552.130 constitutes a compelling reason to overcome the presumption of openness under section 552.302, and provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the vehicle identification number and license plate number you have highlighted under section 552.130. We note, however, that one of the requestors is the owner of the vehicle at issue. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest. Therefore, section 552.023 provides the owner of the vehicle at issue a special right of access to the information in the report pertaining to the vehicle that is otherwise protected under section 552.130.

To summarize, the requested information must be released to the requestors pursuant to sections 552.302 and 552.007, with the exception of the license plate number and vehicle identification number you have highlighted, which must be withheld from one of the

requestors under section 552.130. Pursuant to section 552.023, the license plate number and vehicle identification number you have highlighted must be release to the requestor who is the owner of the vehicle at issue.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive style with a large, stylized 'P'.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/sdk

Ref: ID# 158849

Enc. Submitted documents

c: Mr. Vernon Moore
314 South Oran
Cleburne, Texas 76031
(w/o enclosures)

State Farm Insurance
P.O. Box 1659
Burleson, Texas 76097-9962
(w/o enclosures)